

# Oil and Gas, Natural Resources, and Energy Journal

---

Volume 6

Number 2 *The 2020 Survey on Oil & Gas*

---

October 2020

## Utah

Jim Tartaglia

Follow this and additional works at: <https://digitalcommons.law.ou.edu/onej>



Part of the [Energy and Utilities Law Commons](#), [Natural Resources Law Commons](#), and the [Oil, Gas, and Mineral Law Commons](#)

---

### Recommended Citation

Jim Tartaglia, *Utah*, 6 OIL & GAS, NAT. RESOURCES & ENERGY J. 289 (2020),  
<https://digitalcommons.law.ou.edu/onej/vol6/iss2/23>

This Article is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in Oil and Gas, Natural Resources, and Energy Journal by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact [darinfox@ou.edu](mailto:darinfox@ou.edu).

# ONE J

*Oil and Gas, Natural Resources, and Energy Journal*

---

VOLUME 6

NUMBER 2

---

UTAH



*Jim Tartaglia\**

## *I. Case Law*

### Court Upholds Viability of Laches Defense in Estate of Price v. Hodkin.

The sole judicial development in Utah during the last year was the appellate decision in *Estate of Price v. Hodkin*.<sup>1</sup>

---

\* Jim Tartaglia is a Member in Steptoe & Johnson PLLC's Denver office and concentrates his practice on energy transactional and title matters. He would like to extend a special thanks to Meg Wilson, 2L at Wake Forest University Law School, for her diligent research assistance.

1. 447 P.3d 1285 (Utah App. 2019), cert. denied 456 P.3d 388 (Utah 2019).

This case arose from a quiet title dispute over a one-half mineral interest in lands previously held by two sisters, Catherine and Virginia, as joint tenants with full rights of survivorship. The property in question was owned by the sisters for over 20 years until Catherine passed away, thereby leaving full, fee simple title to the property in Virginia as the surviving joint tenant. However, the parties acted otherwise.<sup>2</sup>

Despite a lack of evidence severing the sisters' joint tenancy, the administration of Catherine's estate concluded with a court-approved deed from Catherine's executor to Virginia ("1966 Deed"), purporting to convey Catherine's interest in the surface of the property and reserving to her estate a one-half interest in the mineral estate.<sup>3</sup> And, over the next 15 plus years following the 1966 Deed, Virginia and her successors in interest made several payments to Catherine's testamentary trust to account for its share of oil and gas production proceeds.<sup>4</sup>

Then, after the 1966 Deed had been of record for nearly 50 years, Virginia's successor in interest ("Plaintiff") sought to quiet title to the entire mineral estate, arguing that Virginia took full title to the property upon Catherine's death, notwithstanding the 1966 Deed and the parties' conduct thereafter.<sup>5</sup> The trial court granted the Plaintiff's summary judgment motion, rejecting, among other arguments, the defendant's asserted defenses including that the Plaintiff's action was time-barred under the doctrine of laches.<sup>6</sup> Specifically, as to the laches defense, the district court found the defendant's did not establish that Plaintiff or its predecessors in title "failed to pursue the action after becoming aware of the facts."<sup>7</sup>

The Court of Appeals reversed the summary judgment order on the laches defense. As the court explained, "to prevail on a defense of laches, a defendant must show that (1) the plaintiff—and, in appropriate cases, the plaintiff's predecessors—failed to diligently pursue its claim against the defendant and (2) the defendant was injured by the plaintiff's lack of diligence."<sup>8</sup>

---

2. *See id.* at 1287 ("Apparently no one at the time [of Catherine's death] questioned whether Catherine's one-half interest in the Property had already passed to Virginia, the surviving joint tenant, upon Catherine's death.")

3. *See id.* at 1287–88.

4. *See id.* at 1288.

5. *See id.*

6. *See id.* at 1288–89.

7. *Id.* at 1289 (citation omitted).

8. *Id.* at 1289–90 (citing cases).

The first prong of this standard requires proof that the plaintiff's delay in bringing suit was for an unreasonable time "after knowledge of the breach."<sup>9</sup> In this case, the key error in the district court's rejection of the laches defense rested on a simple misapplication of the plaintiff's 'knowledge': The Court of Appeals provided a thorough analysis to explain that knowledge in this context means actual *or constructive* knowledge.<sup>10</sup> In turn, the reasonableness of the delay by Plaintiff must be assessed by constructive knowledge of the public record.

As opposed to the district court, the Court of Appeals held that Plaintiff's knowledge began with the recording of the 1966 Deed, and therefore "it appears that [Plaintiff] failed to exercise due diligence in asserting her interest in the other half of the Property's mineral rights because she and her predecessors unreasonably delayed by waiting 47 years to bring an action to quiet title."<sup>11</sup> The court also explained that this delay, which resulted in the defendant's limited access to witnesses and evidence contemporaneous to the 1966 Deed, inherently caused injury to the defendant's position.<sup>12</sup>

## *II. Legislative & Regulatory Developments*

### *A. Legislative Developments*

#### S.B. 148 Enhances Administrative Penalties for Board of Oil, Gas and Mining

Senate Bill 148,<sup>13</sup> effective upon Governor Herbert's March 30, 2020 signature, introduced further legislative direction regarding the imposition and collection of administrative penalties assessed by the Board of Oil, Gas and Mining.

The bill's primary impact is its substantial overhaul of Utah Code § 40-6-11(4), which, as amended, expressly authorizes and directs the Board to impose administrative penalties for violations of its rules. These amendments introduce the new Utah Code § 40-6-11(4)(c)-(h), which provide as follows:

---

9. *Id.* at 1291 (quoting *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne*, 289 P.3d 502 (Utah 2012)).

10. *Id.* at 1291 (quoting *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne*, 289 P.3d 502 (Utah 2012)).

11. *Id.* at 1292.

12. *Id.* at 1293–94.

13. S.B. 148, 2020 Gen. Sess. (Utah 2020) (amending UTAH CODE ANN. § 40-6-2, *et seq.* (LexisNexis 2019)).

(c) The board shall, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish a standardized violation schedule to set the violations and the associated administrative penalty for each violation.

(d) A single violation shall result in a single administrative penalty, that may be imposed on a daily basis for each day that the violation remains unresolved following the assessment of the administrative penalty or completion of the appeal.

(e) Before initiation of an adjudicative proceeding or assessing an administrative penalty, and except for circumstances provided in Subsection (5)(b), the division shall provide a notice of violation to the owner and operator in the form and manner set forth by board rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. The rule made under this Subsection (4)(e) shall, at a minimum, require the notice to set forth the actions necessary to cure the violation and a reasonable period of time to cure the violation.

(f) Should an owner or operator fail to cure the violation as set out in the notice of violation under Subsection (4)(e), the division may initiate an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(g) Administrative penalties assessed by the division or the board may not exceed \$200,000 per violation per person.

(h) An administrative penalty assessed by the division may be appealed to the board within 30 days of the assessment.

(i) If a violation remains unabated and the maximum penalty amount has accrued, the division may request an emergency order from the board requiring the operator or person to suspend operations of the well or facility in violation. Operations may only resume upon abatement of the violation.<sup>14</sup>

In addition to the above amendments, Senate Bill 148 codified collection procedures for these administrative penalties under the new Utah Code § 40-6-11(8), and created the “Oil and Gas Administrative Penalties

---

14. UTAH CODE ANN. § 40-6-11(4) (LexisNexis 2019).

Account” under the new Utah Code § 40-6-11(9). These statutory changes now provide as follows:

(8) After an administrative penalty is assessed under this chapter, the division may collect that administrative penalty as if the administrative penalty were a judgment issued by a court of law so long as the penalized person was provided with notice of the violation, a reasonable opportunity to cure, and an opportunity for a hearing under Title 63G, Chapter 4, Administrative Procedures Act, and the administrative and appellate remedies are exhausted.<sup>15</sup>

(9) (a) There is created within the General Fund a restricted account known as the "Oil and Gas Administrative Penalties Account."

(b) The Oil and Gas Administrative Penalties Account shall consist of: (i) administrative penalties collected by the board or division under this chapter; and (ii) interest earned on the Oil and Gas Administrative Penalties Account.

(c) The Oil and Gas Administrative Penalties Account shall earn interest.

(d) Subject to appropriation by the Legislature, the division may use money in the Oil and Gas Administrative Penalties Account to offset: (i) risks to the public health, safety, or welfare caused by oil and gas operations for impacts and activities covered by bonding; or (ii) other direct impacts to the general public from oil and gas development as identified by the board and the executive director of the Department of Natural Resources at a public hearing that are not otherwise addressed through performance bonds allowed by Subsection 40-6-5(2)(f).

(e) In accordance with Section 63J-1-602.1, appropriations from the Oil and Gas Administrative Penalty Account are nonlapsing.<sup>16</sup>

Senate Bill 148 also calls for the Board to review its existing oil and gas bonding requirements “to determine whether the rules provide adequate

---

15. *Id.* § 40-6-11(8) (LexisNexis 2019).

16. *Id.* § 40-6-11(9) (LexisNexis 2019).

fiscal security for the fiscal risks to the state related to oil and gas operations.”<sup>17</sup>

*B. Regulatory Updates*

There were no significant rulemaking by the Utah Division of Oil, Gas and Mining or other administrative actions that impact oil and gas development during the examination period of this survey. However, there will be administrative action forthcoming with respect to the new legislative directions introduced by S.B. 148 above.

---

17. *See id.* § 40-6-5(9)(a) (LexisNexis 2019).